(B)

BEFORE : THE HON'BLE HIGH COURT OF JUDICATURE

CHHATTISGARH, BILASPUR.

Division Bench

M.A. 607/2004 D.B.

(APPEAL UNDER SECTION 173M.V.ACT.VALUED AT Rs.6,00,000/-FOR ENHANCEMENT)

Appellants :- 1. Manoj Kumar S/o Late Shri Mangilal Bafna
Applicants aged about 30 years,

2. Aashish Kumar S/o Late Shri Mangilal Bafna
Both residents of Doundi Lohara, District Durg (C.G.)

V E R S U S

Respondents : 1. Manish Kumar Rajput s/o J.S.Rajput,
Non-applicants aged about 22 years, resident of Rajapara, Doundi Lohara, Distt. Durg (C.G.)
(Driver of Jeep No. 24CG-0174)

2. Santosh Kumar Jain s/o Gendmal Jain,
aged about 32 years, c/o Arihant Agency,
Main road, Doundi Lohara, Distt. Durg(CG)
(Owner of Jeep No. 24GC-0174)

3. The Oriental Insurance Co.Ltd., through
Divisional Manager, O.I.C.Ltd.,
Malviya Nagar, Durg (C.G.)
(Insurer of Jeep No. 24GC-0174)

P.R. No. 13-7-04
Presented by Shri Ramnyalgaonkar
dated 14-6-04

APPEAL U/s.173 of THE MOTOR VEHICLES ACT,1988 AGAINST THE AWARD DATED 18.03.2004 PASSED BY MA.C.T.RAJNANDGAON IN CLAIM CASE NO.32/2000 RELATING TO MANOJ KUMAR & ANOTHER VERSUS MANISH KUMAR & 2 OTHERS. VALUED AT Rs. 6,00,000/- FOR ENHANCEMENT.

(20)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM: **Hon'ble Shri A.K.Patnaik, CJ**
& Hon'ble Shri Dhirendra Mishra, J.

MISC. APPEAL NO. 607 OF 2004

Manoj Kumar and another **Appellants**

Versus

Manish Kumar Rajput and others **Respondents**

Present: Mr. Yashwant Tiwari, learned counsel for the appellants.

Mr. Avinash Mishra, learned counsel for respondent No. 3/ Insurance Company.

ORDER
(Passed on 16th August 2005)

The following oral order of the Court was passed by A.K.Patnaik, CJ:-

This is an appeal against the order dated 18.03.2004 passed by the Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No. 32/2000, filed under Section 173 of the Motor Vehicles Act, 1988.

2. The facts in brief are that on 28.11.1997 at about 9.00 p.m. Mangilal was traveling in a Jeep bearing registration No. 24 G. C. 0174 which was being driven by respondent No 1. Respondent No. 2 is the owner of the Jeep and respondent No. 3 is the insurer. The said Jeep dashed against a standing truck and as a result of the accident Mangilal suffered some injuries. After treatment in the District Hospital, Rajnandgaon for two days and thereafter in Soubhaghya Hospital, Durg for about a month, he returned home and died on 11.02.1998. The appellants, the two major sons of deceased Mangilal, filed the aforesaid

claim case before the Tribunal, but the Tribunal held in the impugned award that the appellants have not been able to establish a nexus between the injuries suffered by the deceased in the said accident and his death and accordingly dismissed the claim case filed by the appellants.

3. Mr. Yashwant Tiwari, learned counsel for the appellants submits that it will be clear from the evidence of Ayurvedic Doctor, Dr. P.S. Bhaghel, who was examined as A.W.1, that the deceased after return from Soubhaghya Hospital, Durg was under his treatment at home. He submits that from the evidence of A.W. 1 it is clear that the deceased was complaining of pain in his chest and stomach and ultimately died due to failure of his kidney and liver. He further submits that it is also evident from the evidence of A.W. 1 that the internal organs of the deceased namely liver and kidney were damaged on account of the said accident. He further argued that on account of overdoses of medicines taken by the deceased while he was under treatment at Soubhaghya Hospital, Durg, his kidney was damaged and he died. He cited the decision of Gujarat High Court reported in ***1992 ACJ 321*** in ***Shanta Ben Vs. Valji Bhai (Gujrat H.C., D.B.)*** in which the Tribunal had rejected the claim application on the ground that there was no nexus between the injuries suffered by the deceased in the accident and death of the deceased but the High Court set aside the order of the Tribunal and held that the deceased died on account of the development of fat embolism due to the fracture injuries suffered by him in the accident. He also relied on the decision of Gujarat High Court reported in **2003(II) Accident Claims Case 288 (Gujarat), High Court Gujarat,** in ***Gujarat State Transport Corporation Vs. Mariyambai A. Aadamji (dead) through heir and legal representative Zubeda Abdul Habib and another***.

4. Mr. Avinash Mishra, learned counsel for appearing for the respondent No. 3/Insurance Company, on the other hand, submits that the Tribunal was right in coming to the conclusion that the appellants have not been able to establish the linkage between the injuries suffered in the accident and the death of the deceased and therefore it is not a fit case in which the High Court should interfere with the impugned award of Tribunal rejecting the claims of the appellants. He further submits that in any case the appellants who were major sons of the deceased, were not dependent

on him and as such they are not entitled for any compensation. He cited the decision of M.P. High Court reported in ***2005(2) T.A.C. 236 (M.P.)*** in the matter of ***Champabai and others Vs. Bajpai Road Lines and others***, in support of his contention that major sons are not entitled to any compensation.

5. We have perused the aforesaid decision of the M.P. High Court in **Champabai and other Vs. Bajpai Road Lines and Others (Supra)** and we find that in the said case, the Tribunal had awarded a compensation of Rs. 70,000/- to the widow of the deceased and found that the other claimants who were major sons of the deceased were not dependent upon him and therefore, were not entitled to receive any compensation. The widow as well as the major sons preferred an appeal for enhancement of compensation before the High Court and the High Court enhanced the compensation to Rs. 2,20,000/- in favour of the widow. In the aforesaid decision, the High Court has not recorded a finding as to whether major sons would not be entitled to compensation in the absence of the widow of the deceased. Under Section 166 of the Motor Vehicles Act, 1988, a legal representative can file an application for compensation and hence, an application for compensation would be maintainable at the instance of major sons of the deceased who has died in a motor accident. As to what would be the amount of compensation payable to the major sons who were not dependents on the deceased, however, would be a matter for determination by the Tribunal on the facts and circumstances of each case.

6. Coming to the contention of Mr. Tiwari, learned counsel for the appellants that A.W. 1, the Ayurvedic Doctor, who had treated the deceased at the residence of the deceased, in his evidence has proved the linkage between the injuries caused in the accident and the death, we find on reading of evidence of A.W. 1 that the deceased ultimately died on account of failure of his kidney and liver and the liver and the kidney of the deceased may or may not have been affected by the injuries in the said accident. It appears from the evidence that the deceased soon after the said accident was admitted in the District Hospital, Rajnandgaon and thereafter was admitted in Soubhaghya Hosiptal, Durg where he underwent treatment for about a month. The doctors of the District

Hospital, Rajnandgaon and Soubhaghya Hospital, Durg are material witnesses who could have deposed before the Tribunal about the kind of injuries the deceased suffered and as to whether on account of said injuries, the liver and kidney of the deceased could in any way be affected. The doctor of the District Hospital, Rajnandgaon and Soubhaghya Hosiptal, Durg could also throw some light on the nature of the treatment that was given to the deceased including the medicines that were administered to him and could also show as to whether the overdoses of the medicines given to the deceased, if any, could affect his liver and kidney. But unfortunately, the doctors of neither District Hospital, Rajnandgaon nor of Soubhaghya Hospital, Durg have been examined in this case. In the two cases cited by Mr. Tiwari, learned counsel for the appellants, the High Court after going through the evidence of the doctors who were examined at length came to the conclusion that there was some nexus between the injuries suffered in the accident and the death of the deceased but in the present case, we find no material to arrive at such a finding.

7. For the aforesaid reasons, we set aside the impugned award of the Tribunal and remand the matter to the Tribunal for giving an opportunity to the appellants to examine the doctors and adduce other evidence to establish that there was in fact a linkage between the injuries suffered in the accident by the deceased and his death. The Tribunal would do well to complete enquiry and make a fresh award within six months from the date of receipt of the records from this Court. The appellants and the respondents will appear before the Tribunal on 09th September, 2005 when the Tribunal will either take up the hearing of the case on that date or fix some other date as per his convenience.

Sd/-
Chief Justice

Sd/-
DHIRENDRA MISHRA
Judge